IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4815 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMAD IKBAL GULAMNABI GHANCHI

Versus

STATE OF GUJARAT

Appearance:

MR JASHWANT SHAH for MR PS CHAMPANERI for Petitioner

MR AJ DESAI, ld.AGP for Respondents Nos.1 to 3

MR RM CHHAYA for Respondent No. 4

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 28/03/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 17th May 1999 passed by the Government whereby the authorisation in favour of the petitioner to run a fair price shop has been set aside.

The authorisation to run the fair price shop was to be given at Mirkuva in Dholka, Taluka Dholka, District Ahmedabad and the petitioner and the respondent no.4 along with others were the applicants. The District Supply Officer granted the authorisation in favour of the petitioner on 8th March 1999. The respondent no.4, therefore, filed an appeal before the Collector, without impleading the petitioner as a respondent. However, the Collector, rejected the appeal of the respondent no.4 on 24th March 1999. Thereupon the respondent no.4 preferred a revision application before the Government and the Government allowed the revision and set aside the order of District Supply Officer by which the authorisation to run the fair price shop was given to the petitioner on the grounds that the circulars issued by the Government for the purpose of giving preference in the matter of granting authorisation for fair price shop had not been followed by the District Supply Officer and that the Cooperative Society was to be given preference compared to an individual and further that the respondent no.4 was a Cooperative society and therefore, it had a preferential right of consideration vis-a-vis the present petitioner who was an individual.

2. Be that as it may, the fact remains that the respondent no.4 failed to implead the petitioner as a party either in the appeal before the Collector or in revision before the State Government.

3. Learned Asstt. Govt. Pleader has produced before this Court the order dated 17th May 1999 whereby the authorisation in favour of the petitioner was set aside by the Government in revision. It is not in dispute between any of the parties that the petitioner was not arrayed as a respondent either in the appeal or in the revision. In the facts and circumstances of this case, I find it appropriate to remand the matter back to the Government as prayed. The order dated 17th May 1999 passed by the State Government is hereby quashed and set aside. The respondent authority is directed to hear the revision application of the respondent no.4 afresh after due notice of the same to the petitioner. It will be open for the petitioner as well as the respondent no.4 to address all available grounds to each of them before the concerned functionary who takes up the revision for hearing. Such authority is also directed to decide the controversy in accordance with law after hearing both the sides, within a period of one month from the date the copy of this order is produced before such authority. Nothing said or observed in the earlier order dated 17th May 1999 which has been set aside by this Court shall

have any impact or influence on the concerned authority while deciding the matter afresh and passing the orders in accordance with law. Till such time the revision application of the respondent no.4 is decided, the position as obtaining today with regard to the running of the fair price shop in question shall continue. This Special Civil Application is accordingly allowed and the Rule is made absolute. No order as to costs. Direct service is permitted.

(M.R. Calla, J.)

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